

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned and void. NM MC 82241 through NM MC 82243.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

Evidence of annual assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

APPEARANCES: George I. Lakich, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

George I. Lakich has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 9, 1981, declaring the Providencia Nos. 1, 2, and 8 1/ mining claims, NM MC 82241

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1/ The BLM decision mistakenly refers to the mining claims as the Providencia Nos. 1, 2, and 3.

through NM MC 82243, abandoned and void for failure to file timely evidence of annual assessment work or notices of intention to hold the claims for the 1980 assessment year pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claims were located on March 10, 1932, and in April 1958 and filed for recordation with BLM on October 22, 1979. An "Affidavit of Labor Performed and Improvements Made," regarding assessment work performed during the 1980 assessment year, was filed with BLM on January 6, 1981. The deadline for filing was December 30, 1980.

In his statement of reasons for appeal, appellant states that evidence of annual assessment work was "sent by the United States Post Office to be special delivered to the Santa Fe Office of the Bureau of Land Management, postmarked a couple of days before the deadline." The front of the envelope bears a Patagonia, Arizona, postmark dated December 29, 1980. The back of the envelope has a Denver, Colorado, postmark dated December 30, 1980. Appellant argues that express mail service to Santa Fe was not available and that, in view of this fact, BLM should "not be so stringent in interpretation of deadline dates." Finally, appellant contends that his good faith efforts indicate an intention not to abandon the claims.

[1] Section 314(a) of FLPMA, supra, requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of annual assessment work or a notice of intention to hold the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation, 43 CFR 3833.2-1(a), reads:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

[2] The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Glenn D. Graham, 55 IBLA 39 (1981), and cases cited therein. Appellant's assertion that his letter was postmarked "a couple of days before the deadline" is incorrect. December 30 was the deadline. In any event, filing is accomplished when a document is delivered to and received by

the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

When appellant failed to file timely either evidence of annual assessment work or notices of intention to hold the claims, BLM properly held the claims to have been abandoned and void. Earl Kremiller, 55 IBLA 28 (1981). This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge